86-185

Supreme Court, U.S.
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No. 86-

In The

Supreme Court of the United States

OCTOBER TERM, 1986

Robert A. Heghmann,
Petitioner

v.

State of Connecticut
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Robert A. Heghmann*
203 Godfrey Road
Weston, CT 06881
(203) 623-1621 (ext. 4598)

Counsel for Petitioner

**Counsel of Record*

August 1986

29pp

Question Presented

I.

Whether the Courts below erred in not considering general principles of state preclusion law in determining the preclusive effect of a state court judgment in a subsequent federal proceeding.

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STATUTE INVOLVED

28 U.S.C. 1738:

Judicial Proceedings "shall have the same full faith and credit in every court within the United States...as they have by law or usage in the courts of such State...from which they are taken." 9

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Robert A. Heghmann[1] petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit affirming the district court's decision that it was without jurisdiction to entertain Petitioner's constitutional

1 The parties to the proceeding in the United States District Court for the District of Connecticut, other than those in the caption, were Beatrice M. Heghmann, Plaintiff, and Judge Burton Jacobson, in his official capacity as Presiding Judge of the Bridgeport Superior Court and 6 Highwood Lane, Defendants.

claims. The courts below held as a matter of federal law that the prior state court judgment barred litigation in the federal court of Petitioner's due process and equal protection claims. Petitioners had briefed and argued that the federal court should look to general principles of Connecticut claim preclusion law in determining whether or not the prior state court judgment precluded litigation of constitutional claims in federal court and, further, that under Connecticut law these claims were not barred. The courts below did not discuss Connecticut law in their decisions.

Opinions Below

The opinion of the United States District Court for the District of Connecticut, which is not officially reported, appears at Appendix A to this Petition. The decision of the United States Court of Appeals for the Second Circuit, which is not reported, appears at Appendix B to this Petition.

Jurisdiction

The decision of the Circuit Court of Appeals which is the basis for this petition was issued on February 27, 1986. Petitioners timely Petition for Rehearing and Rehearing *en banc* was denied on May 8, 1986. The jurisdiction of this court is invoked pursuant to 28 U.S.C. 1254(1).

Statute Involved

The federal statute, 28 U.S.C. 1738, is set forth in pertinent part in the Table of Authorities.

STATEMENT OF THE CASE

The Second Circuit Court of Appeals has created a judicial exception to the federal full faith and credit statute, 28 U.S.C. 1738, wherein claims made in the federal court which call into question the validity of a prior state court judgment are barred as a matter of federal law without consideration of the general principles of state claim preclusion law even where the claims made in federal court were not decided in the prior state court action nor are they "inextricably interwined" with the prior state court judgment.

A. The Courts Below in Dismissing the Complaint Based Their Decision Solely on Federal Law.

The courts below made the following findings:

1. Count Two alleges constitutional error in the process leading up to the state court judgment. (Appendix A at 3a).

2. Counts One, Three and Four mount constitutional attacks on Connecticut mortgage foreclosure statutes as well as the state court's practices and procedures in dealing with mortgage foreclosure actions. (Appendix A at 4a).

3. The constitutional claims made in federal court were not adjudicated in the prior state court action. (Appendix B at 8a).

4. The claims made in the federal action are not "inextricably intertwined" with the final state court judgment. (Appendix A at 4a).

5. Petitioners argued in the district court that under this court's opinions in the *Migra* and *Marrese* decisions they are not precluded from raising the constitutional claims asserted in the instant federal action because heretofore they have not

been "resolved" in any state court proceeding. (Appendix A at 3a).

6. Petitioners claimed in the district court that as a matter of Connecticut law they remain free to pursue these claims in state court. (Appendix A at 3a).

As the district court noted in its opinion, Petitioners predicated their claim that the litigation of the federal constitutional claims in the instant federal action was not barred by the prior state court judgment on Connecticut law as made applicable by this court's decisions in *Migra v. Warren City School District*, 465 U.S. 75 (1984) and *Marrese v. American Academy of Orthopaedic Surgery*, 470 U.S. , 105 S.Ct. 1327 (1985). (Appendix A at 3a). Petitioners cited numerous state authorities supporting their argument that under Connecticut claim preclusion law, these claims would not be barred in state court. Neither the district court or the court of appeals discussed Connecticut law on issue preclusion. Instead, they dismissed the complaint as a matter of federal law citing this court's opinions in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) (hereinafter "the *Rooker-Feldman* Doctrine").

The Second Circuit had previously considered the application of the *Rooker-Feldman* doctrine to constitutional claims made in federal court which had not been raised and decided in a prior state court proceeding in *Texaco, Inc. v. Pennzoil Company*,784 F.2d 1133 (2nd Cir.), *cert. granted*, U.S. (1986). In that decision, the Second Circuit rejected the argument of Pennzoil that "Texaco's claims are barred because *Rooker-Feldman* should be read broadly to preclude federal review of issues which a party *could have raised* in the state court proceeding, but *chose to withhold* from the state court. We disagree." (emphasis added) *Texaco, Inc. v. Pennzoil Company*, supra, 784 F.2d at 1144. Thus, the Second Circuit initially refused to read *Rooker-Feldman* broadly. However, later in the same opinion the court, although not required to do so, went out

of its way in *dicta* to note that this result was reached in part because the federal claims did not call into question the validity of the prior state court judgment. Id. at 1146-1147.

Petitioners during an oral argument in the district court which was held prior to the *Texaco* decision took precisely the same position as Texaco. As the district court noted in its opinion, "Plaintiffs maintain that the relevant issue is not whether they 'could have' raised their constitutional challenges in state court, but whether they were required to raise them there." (Appendix A at 3a). The district court did not specifically address this point but dismissed the complaint citing *Rooker*. On appeal, the Second Circuit, post-*Texaco*, affirmed the district court citing *Texaco* and the *Rooker-Feldman* doctrine and specifically cited *Texaco's* language concerning a challenge to the validity of the underlying state judgment. (Appendix B at 8a).

B. Petitioners Federal Constitutional Claims Were Not and Could Not Have Been Litigated Prior to the State Court Judgment.

Petitioners were defendants in the prior state court action. They did not select the forum and its procedural rules but were summoned into it. Under Connecticut practice, federal constitutional claims such as those raised in the instant action are not recognized defenses to a foreclosure action. If permitted at all, they must be raised as counterclaims. In their state court answer, Petitioners did plead violations of federal due process and equal protection rights. The First Counterclaim was based squarely upon the Fourteenth Amendment setting forth *in hoc verba* the language of that amendment. Likewise, the Second Counterclaim alleged violations of 42 U.S.C. 1983 also setting forth the language of that statute. These counterclaims survived a Motion to Strike and were held to be proper.

After upholding the validity of the constitutional counterclaims, the state court judge promptly *severed* them from the limited state law foreclosure issues. (Appendix A at 1a). The

court, upon a motion for partial summary judgment, entered judgment and ordered execution on the limited state law judgment while leaving all federal constitutional issues pending on a two year waiting list. Thus the state court refused to decide any federal constitutional issues before entering judgment. The district court noted that the prior state court judgment had survived appeal to the Connecticut Supreme Court and this court. See, *Heghmann v. Connecticut Savings Bank*, 193 Conn. 157, *cert. denied*, U.S. , 105 S.Ct. 252 (1984). Petitioners do not deny this but point out that at every appellate level they objected to the severence of the federal constitutional issues from the limited state law issues. The court's attention is respectfully directed to the Petition for Certiorari filed in the Connecticut Savings Bank case, Docket No. 84-242. The very first issue raised and argued in that petition was stated as follows:

> "I. The Failure and Refusal of the State Superior Court Judge to Rule on the Constitutional Issues Denied the Petitioners the Right to a Full and Fair Hearing and the Equal Protection of the Law."

Petitioners repeatedly argued that the severance of constitutional issues and their postponement while judgment was entered upon limited state law issues violated the rationale of this court's decision in *Boddie v. Connecticut*, 401 U.S. 371 (1971). This court and the Connecticut Supreme Court allowed the severance to stand.

During the pendency of the state court proceeding, this court issued its opinions in the *Migra* and *Marrese* decisions. After the appellate courts allowed the state court severence to stand, Petitioners returned to the state court and withdrew without prejudice all federal constitutional issues still pending in the state court and filed the instant action in which emphasis is made on post-judgment constitutional violations which occurred after the final state judgment was entered. Petitioners could have amended their pending state court counterclaims and proceeded in state court but elected instead to have the severed federal claims heard in

federal court. This decision was predicated on the *Migra* and *Marrese* decisions and Connecticut preclusion law. The courts below responded by applying the *Rooker-Feldman* doctrine so broadly as to require dismissal of claims which had not been previously decided but were "*tantamount* to a collateral attack on that final judgment." (emphasis added) (Appendix A at 3a).

REASONS FOR GRANTING THE WRIT

This case represents an important step in the continued development of both the *Rooker-Feldman* and *Migra-Marrese* lines of case law. It will also present to this court the first opportunity to harmonize the *Rooker-Feldman* doctrine and their statutory foundation, 28 U.S.C. 1257, with *Migra* and *Marrese* and their statutory foundation, 28 U.S.C. 1738. This is not a novel or exotic issue for, as described infra, this issue has arisen in the Fifth and Ninth Circuits in addition to the Second Circuit twice (*Texaco* and the instant action) and, further, the Fifth and Ninth Circuits reached the opposite conclusion as that reached by the Second Circuit in the instant action. Clearly, there is confusion on the scope of the *Rooker-Feldman* doctrine. Should it be read so broadly as to form an exception to 28 U.S.C. 1738 and require greater preclusive effect in federal court than it would have in state court if the claim calls into question the validity of the prior state court judgment? The Second Circuit says yes. The Fifth and Ninth Circuits say no. This court should grant this petition and take up the issue to settle the split among the circuits and clarify the proper interpretation of this important jurisdictional issue which effects the very jurisdiction of the federal courts and the access of civil rights litigants to the federal courts to vindicate their due process and equal protection rights.

I.

The Decision Below Violates This Court's Mandate Set Out in the *Marrese* Decision by Creating a Separate Federal Rule of Claim Preclusion in Conflict with Connecticut Law.

Petitioners decision to withdraw all pending constitutional claims from the state court without amending those claims to add the post-judgment violations alleged in the instant action was based entirely on this court's opinion in *Marrese* and Connecticut law on claim preclusion. In the *Marrese* decision this court stated that, "The Court of Appeals erred by suggesting that...a federal court should determine the preclusive effect of a state court judgment without regard to the law of the state in which judgment was rendered." *Marrese v. American Academy of Orthopaedic Surgery*, supra, 105 S.Ct. at 1331. This court then turned its attention to the federal full faith and credit, statute, 28 U.S.C. 1738, and noted, "This statute directs a federal court to refer to the preclusion law of the state in which judgment was rendered. 'It has long been established that 1738 does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken." (citations omitted) Id. at 1332. The Petitioners argued below that the court should look to Connecticut law to determine the preclusive effect of the Connecticut judgment. This the courts below declined to do.

Petitioners are well aware that by failing to raise claims in a state court, a federal plaintiff may forfeit his right to obtain review of the state court decision in any federal court. See *District of Columbia Court of Appeals v. Feldman*, supra, 460 U.S. at 482, n. 16. Petitioners agree that it is desireable to give the state court the first opportunity to consider a state statute in light of federal constitutional arguments. Id. at 482, n. 16. Petitioners herein tried to submit federal constitutional claims to the state

court prior to judgment. The state court severed all constitutional issues and refused to reach them prior to entering judgment. After the entry of the final judgment on limited state law issues, the severed constitutional issues remained pending. Petitioners were then effectively plaintiffs in the severed constitutional action. Rather than submit these issues to a court which had shown no interest in resolving any constitutional issues, Petitioners elected to submit these federal issues to the federal court for resolution. As plaintiffs, Petitioners would have had the option to chose the federal forum initially to resolve the federal constitutional issues. Since the state court refused to reach these issues before entering a limited judgment, Petitioners believe that they should be free to submit the issues to the federal court.

Petitioners offer that the Second Circuit in both this action and in *Texaco* failed to follow this court's mandate set out in the *Marrese* decision. Both cases involved the preclusive effect of a prior state court judgment on a subsequent federal action. In both cases the Second Circuit ignored state preclusion law and based its decision solely on federal law. Petitioners believe that this practice violates the *Marrese* rationale and pray that this court grant the Petition and give further guidance to courts and litigants alike of the interplay between the *Rooker-Feldman* doctrine and the *Migra-Marrese* decisions.

II.

The Decision of the Second Circuit is in Direct Conflict with Decisions in Other Circuits Creating a Split Among the Circuits on an Issue with Important Implications Which Heightens the Need for Review by this Court.

The Second Circuit's broad application of the *Rooker-Feldman* doctrine in the instant proceeding stands in sharp contrast with decisions in the Fifth and Ninth Circuits which, when faced with the same issue, reached exactly the opposite

conclusion.

In *Robinson v. Ariyoshi*, 753 F.2d 1468 (9th Cir.), *cert. granted*, U.S. (1985), the Ninth Circuit was faced with very similar issues in a post-*Feldman* setting. In *Robinson*, the federal plaintiffs had been unsuccessful litigants as defendants in a prior, completed state court action. In the state court proceeding, *McBryde Sugar Co. v. Robinson*, 55 Hawaii 260 (1973), *cert. denied*, 417 U.S. 962 (1974), the state court entered a final judgment stripping Robinson of certain valuable riparian rights. As part of that litigation, while the principal issues involved state property law, Robinson attempted to enlarge the scope of the litigation to include federal constitutional claims, however, the court rejected the attempt. *Robinson v. Ariyoshi*, supra, 753 F.2d at 1470-1471. After the conclusion of the state court litigation, Robinson filed the federal actions seeking to litigate the federal constitutional issues which the state court refused to reach. The federal defendants claimed in part that the federal lawsuit was barred by the prior judgment under the *Rooker-Feldman* doctrine. Id. at 1471-1472. The Ninth Circuit rejected this contention stating, "under the rubric of either 'jurisdiction' or 'res judicata', the crux of the question is whether there has already been consideration and decision of the issue presented... If no consideration has been given, or any decision on the matter is ambiguous, it is unlikely that the issues presented to the state high court and to the federal court are so 'inextricably intertwined' that the federal court cannot take jurisdiction." (citation omitted) Id. at 1472. The circuit court then continued, "Where a state court has refused to entertain federal constitutional claims, a federal court violates the precepts of neither subject matter jurisdiction nor res judicata by hearing those claims." Id. at 1473.

Similarly, in *Rhoades v. Penfold*, 694 F.2d 1043 (5th Cir. 1983), the Fifth Circuit in a pre-*Feldman* decision was faced with the application of the *Rooker* doctrine. As in the instant action and *Robinson v. Ariyoshi*, supra, the federal plaintiffs had been

unsuccessful litigants as defendants in the prior state court proceeding. In state court, a jury in a custody proceeding rendered a judgment permanently terminating the parental rights of Mr. and Mrs. Rhoades. The Rhoades then filed suit in federal court claiming that the proceeding itself was procedurally defective in that the court had failed to advise the Rhoades that an attorney would be appointed for them if they could not afford one. As a result of this, the Rhoades alleged that the proceeding itself constituted a deprivation of constitutional rights. The state answered and cited *Rooker* for the proposition that the federal court did not have jurisdiction to hear the case. Id. at 1046-1047. The circuit court decided, "Significantly, Rhoades was not claiming that the district court should review the state court's rulings on the substantive issues involved in the termination proceeding. To the contrary, Rhoades simply maintained that the entire proceeding, quite apart from the substantive issues of the termination proceeding, was constitutionally defective...consequently, this Court holds that the district court did have jurisdiction." Id. at 1047.

Under the rationale of the *Rhoades* and *Robinson* decisions, had the Petitioners and their property been situated within the ambit of the Fifth and Ninth Circuits, their complaint would not have been dismissed. As in *Rhoades*, Petitioners are not asking the federal court to review the rulings on the substantive issues involved in the prior state proceeding. Rather, Petitioners maintain that the proceeding was constitutionally defective. As in *Robinson*, Petitioners attempted to expand the scope of the state court proceeding to include constitutional claims but their efforts were frustrated by the state court. Petitioners cited the *Rhoades* and *Robinson* decisions in the district court, in their appeal brief and in the Petition for Rehearing and for Rehearing *en banc*. Cleary the Second Circuit had these decisions before it and elected to split from the Fifth and Ninth Circuits to announce a separate rule. The second circuit's interpretation of the *Rooker-Feldman* doctrine that requires dismissal of any claim which calls into question the validity of a state court judgment would have

resulted in dismissal of both the Rhoades and Robinson complaints. This represents a clear split on this vitally important jurisdictional issue which directly impacts the access of civil rights litigants to the federal courts. Petitioners believe that *Rhoades* and *Robinson* correctly interpret the scope of the *Rooker-Feldman* doctrine and that the Second Circuit expansion of that doctrine to preclude claims which have not been actually decided but which are *tantamount* to a collateral attack on the state court judgment is an ill defined and dangerous barrier to civil rights claims which this Court should address.

III.

This Court Has Agreed to Hear Two Cases Involving a Related Jurisdictional Issue and the Granting of This Petition Will Add Greater Depth to the Court's Analysis.

This Court has agreed to hear appeals in *Robinson v. Ariyoshi* and *Texaco, Inc. v. Pennzoil Company*, supra., the only appellate decisions to consider the scope of the *Rooker-Feldman* doctrine since this Court issued its opinion in *Feldman*. Although there are numerous other issues involved in those appeals, the first issue this court must consider will be federal court jurisdiction and whether or not the exercise of jurisdiction by the lower courts was proper in light of the *Feldman* decision. In this context, the granting of this Petition will not add materially to this court's already overburdened docket. In addition, since this court will be taking up the *Rooker-Feldman* doctrine in connection with the other appeals, the granting of this petition and consideration of the decision in the instant action combined with the other appeals will add greater depth and texture to this court's interpretation of the law of claim preclusion and the scope of the *Rooker-Feldman* doctrine. This case stands at the opposite end of the *Rooker-Feldman* spectrum in that the claims in the instant action were barred while those in *Texaco* and *Robinson* were not. The contrast of treatment of claims under the *Rooker-Feldman* doctrine between this action and the *Texaco* and *Robinson* deci-

sions will enable the court to consider the issue in a broader context and thereby give greater guidance to litigants and the lower courts in this important jurisdictional area.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

Robert A. Heghmann
430 Riverside Avenue
Wesport, CT 06880
(203) 623-1621 (ext. 4598)
Counsel for Petitioners

August, 1986

No. 86-

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Supreme Court of the United States

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Robert A. Heghmann,
Petitioner

v.

State of Connecticut
Respondent

APPENDIX

Appendix A

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ROBERT A. HEGHMANN and
BEATRICE M. HEGHMANN,
-Plaintiffs

- v - CIVIL NO. B-84-597 (TFGD)

STATE OF CONNECTICUT,
PROPERTY LOCATED AT
6 HIGHWOOD LANE, and
BURTON JACOBSON IN
HIS OFFICIAL CAPACITY
AS PRESIDING JUDGE OF
THE CONNECTICUT SUPER-
IOR COURT FOR THE JUDI-
CIAL DISTRICT OF FAIR-
FIELD,
-Defendants

MAGISTRATE'S OPINION

This is an action for a declaratory judgment and injunctive relief under 42 U.S.C. §1983. The *pro se* plaintiffs are a husband and wife whose property was foreclosed by the Connecticut Savings Bank ("CSB") in an action in the Connecticut Superior Court at Bridgeport. *Connecticut Savings Bank v. Heghmann, et al.*, CV-81-194304. The Heghmanns had raised certain constitutional counterclaims in that action, but they were severed and a final judgment entered against them on CSB's foreclosure claim. The Heghmanns appealed this judgment, as well as the order severing their counterclaims. Their appeal was dismissed by the Connecticut Supreme Court for failure to file a brief. Later, the Heghmanns unsuccessfully appealed to the

Connecticut Supreme Court from an order denying their motion to reopen the judgment against them, as well as the previous Superior Court decisions granting severance and entering summary judgment. *Connecticut Savings Bank v. Heghmann*, 193 Conn. 157 (1984). The Heghmanns then sought certiorari, which was denied. *Heghmann v. Connecticut Savings Bank U.S. (1984), 53 U.S.L.W. 3269 (October 9, 1984).*

I.

There are four counts in the second amended complaint. Although the Heghmanns deny they were aware of the facts and circumstances giving rise to any of these four counts at the time they were in the Connecticut Superior Court, they concede they were aware of the existence of their purported constitutional claims before the Connecticut Supreme Court handed down its decision on May 15, 1984. It further appears that each of these claims could have been raised in the Connecticut Supreme Court. That Court has the authority to review claims of "plain error" not properly preserved in the trial court. Connecticut Practice Book §3063. Moreover, where, as here, there is "an accusation of prejudice against a judge, 'which strikes at the very core of judicial integrity and tends to undermine public confidence in the established judiciary,'" the Connecticut Supreme Court has forcefully exercised that authority. *See Cameron v. Cameron*, 187 Conn. 163, 168 (1982).

In the instant case, each count of the complaint casts an aspersion at the state judiciary. Each count suggests or implies bias, cronyism and an institutionalized disregard for notions of fundamental fairness in the administration of the affairs of the Superior Court at Bridgeport. Furthermore, though other forms of relief are sought, a central aim and objective underlying at least the first two counts of the second amended complaint is the invalidation by this court of a final judgment entered by a state trial court, upheld by the Connecticut Supreme Court, and then subject to review on certiorari by the United States Supreme Court.

Plaintiffs maintain that the relevant issue is not whether they "could have" raised their constitutional challenges in state court, but whether they were required to raise them there. At oral argument on the defendants' motion to dismiss (*See* Tr. of September 23, 1985 proceedings) plaintiff Robert Heghmann, who is representing himself and his wife, conceded that as a matter of state law he remains free to pursue his constitutional counterclaims in state court. Those claims have simply been "withdrawn without prejudice" by him in the Superior Court. In plaintiff's view, however, they are not precluded from raising the constitutional claims asserted in the instant federal action because heretofore they have not been "resolved" in any state court proceeding. *Cf. Migra v. Warren City School Dist. Board of Education* U.S. , *104 S.Ct. 892 (1984); Marrese v. American Ac. or Ortho. Surg.*, U.S. , 105 S.Ct. 1327 (1985).

II.

To the extent plaintiffs seek to invalidate the judgment of foreclosure (*See e.g.*, Second Amended Complaint, Prayer ¶¶2-3), they are clearly barred from doing so by *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). That judgment has survived an appeal to the Connecticut Supreme Court, and certiorari has been denied by the United States Supreme Court. The judgment of foreclosure is final and cannot be set aside by this court. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Warriner v. Fink*, 307 F.2d 933, 936 (5th Cir. 1962) *cert.* denied, 372 U.S. 943 (1963), (district court lacks jurisdiction to set aside state court mortgage foreclosure decree). Since count two of the second amended complaint does little more than allege error, albeit of constitutional dimension, in the process leading up to the state court judgment and is tantamount to a collateral attack on that final judgment, it should be dismissed pursuant to the *Rooker* doctrine.

III.

The more generalized constitutional claims plaintiffs advance in the first, third and fourth counts of their second amended

complaint seem to fall into a somewhat different category. Although the defendants argue that these counts are "inextricably intertwined" with the final state court judgment of foreclosure and, therefore, also must fail under the *Rooker* doctrine, an exercise of jurisdiction over these claims would not seem necessarily to place the district court in the impermissible position of reviewing a final state court judgment. But this is not to say that the claims in question are suitable for federal adjudication or that the plaintiffs are the appropriate persons to advance them.

However else they may be described, it is clear that counts one, three and four of the second amended complaint mount constitutional attacks on Connecticut mortgage foreclosure statutes, Conn. Gen. Stat. §§49-7 and 49-25, as well as the Superior Court's practices and procedures in dealing with mortgage foreclosure actions. The Heghmanns, however, are no longer defendants in any mortgage foreclosure action. No proceedings are pending against them. The claims which CSB initiated against them in 1981 have long since culminated in a final nonreviewable judgment. Furthermore, it is not alleged, nor does it appear, that the Heghmanns are under imminent threat of any other foreclosure action being brought against them. While they may still be free, as they contend, to reclaim their constitutional counterclaims against CSB in state court, this does not necessarily mean that they are at liberty to advance purportedly new constitutional claims in this court.

Federal courts are tribunals of limited jurisdiction. There is a constitutional limitation of federal court jurisdiction to "actual cases or controversies". *Flast v. Cohen*, 392 U.S. 83, 95 (1968). "The concept of standing is part of this limitation." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976). The standing doctrine "focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." *Id.* at 38. To have standing, and to satisfy the Article III case or controversy requirement, "a litigant must have suffered some actual injury *that can be redressed by a favorable judicial decision.*" *Iron Arrow Honor Society v.*

Heckler, U.S. , 104 S.Ct. 373, 374-375 (1983) (Emphasis added). "Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation." *Eastern Ky. Welfare Rights Org.*, *supra*, 426 U.S. at 38.

For the reasons previously stated, this court lacks authority to vacate the judgment of foreclosure, even if there was error in the state court proceedings. *Rooker v. Fidelity Trust*, *supra*. Moreover, since foreclosure proceedings against the Heghmanns have culminated in a final judgment of foreclosure, a declaratory judgment by this court would not seem to be "an adjudication of *present* rights." *Ashcroft v. Mattis*, 431 U.S. 171, 172 (1977) (Emphasis added). Indeed, the availability of a declaratory judgment "presupposes the existence of a judicially *remediable* right." *Schilling v. Rogers*, 363 U.S. 666, 677 (1960) (Emphasis added). In this case plaintiffs have not shown the existence of any injury, past or imminent, which can be *remedied* by a declaratory judgment.

With respect to their claim for injunctive relief, plaintiffs appear to be in the same predicament. In essence they are asking a federal court to enjoin the rules and practices of a coordinate sovereign's court before which they have no matter pending. In these circumstances, the Heghmanns appear to be even less entitled to an injunction than was the plaintiff in *Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). At least in *Lyons*, plaintiff had a speculative claim that he might be injured in the future. Here, if plaintiffs were wronged at all--which the court need not decide--there is neither an allegation nor a sufficiently reasonable "likelihood that [they] will again be wronged in a similar way. . . ." *Id*. For these reasons, plaintiffs lack standing to make the claims set forth in counts one, three and four of their second amended complaint. Accordingly, they should be dismissed as well.

IV.

The complaint should be dismissed for the reasons set forth above. The parties are free to seek timely review by the district judge as provided by statute, 28 U.S.C. §636, and Local Rules.

Dated at Bridgeport, Connecticut, this 25th day of September, 1985.

Thomas P. Smith
UNITED STATES MAGISTRATE

Appendix B

UNITED STATES COURT OF APPEALS

Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 27th day of February one thousand nine hundred and eighty-six.

Present:

HONORABLE IRVING R. KAUFMAN,

HONORABLE AMALYA L. KEARSE,

Circuit Judges.

ROBERT A. HEGHMANN and BEATRICE M. HEGHMANN,

Plaintiffs,

ROBERT A. HEGHMANN,

Plaintiff-Apellant,

-against- 85-7882

STATE OF CONNECTICUT, BURTON JACOBSON in his official capacity of Presiding Judge of the Connecticut Superior Court for the Judicial

District of Fairfield, and 6 HIGHWOOD LANE,

Defendants-Appellees.

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

1. Heghmann contends the district court improperly dismissed his complaint for lack of subject matter jurisdiction. In an opinion adopted by Chief Judge Daly, Magistrate Smith correctly ruled, however, that federal district courts lack the power to review state court judgments. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). Although Heghmann's claims were not adjudicated in state court, he cannot now mount a collateral attack on the state judgment of foreclosure. *See Texaco, Inc. v. Pennzoil Co.*, Nos. 86-7046, 86-7052 (2d Cir.Feb. 20, 1986) (preliminary injunction against invoking state post-judgment bond and lien provisions permissible because, *inter alia*, plaintiffs did not seek to invalidate state judgment). Accordingly, the portion of Heghmann's complaint seeking to set aside the mortgage foreclosure was properly dismissed.

2. Heghmann also argues that the district court erred in dismissing his generalized constitutional attack on Connecticut's statutory and judicial mortgage foreclosure procedures. Heghmann, however, now lacks standing to bring his general claims. The appellant is not likely to be involved in fur-

ther Connecticut mortgage proceedings. Therefore, his claims for declaratory and injunctive relief were also properly dismissed. *See Iron Arrow Honor Society v. Heckler*, 104 S.Ct. 373, 374-74 (1983); *Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).

3. We have considered Heghmann's other claims and consider them to be equally without merit.

4. Accordingly, the judgment of the district court is affirmed.

IRVING R. KAUFMAN,

AMALYA L. KEARSE,
Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.